

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

GEMSTONE FOODS, LLC et al., }
Plaintiffs, }
v. }
AAA FOODS ENTERPRISES, }
INC.; et al., }
Defendants. }

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

MICHAEL ENSLEY, et al., }
Plaintiffs, }
v. }
BEN O. TURNAGE, et al., }
Defendants. }

**PLAINTIFFS' MOTION TO STRIKE AND/OR DISALLOW AMENDED
ANSWER AND COUNTERCLAIMS OR, ALTERNATIVELY, TO DISMISS
COUNTERCLAIMS UNDER RULE 12(b)(6)**

COME NOW Gemstone Foods, LLC, and RCF, LLC, (“Plaintiffs”), through counsel, and file their Motion to Strike and/or Disallow Amended Answer and Counterclaim or, Alternatively, to Dismiss Counterclaims under Rule 12(b)(6):

1.1 This Court should strike and/or disallow Defendants’ Amended Answer and Counterclaims because Defendants failed to seek leave under Federal Rule of Civil Procedure 15(a)(2) to amend their Answer and Counterclaims. Defendants also unduly delayed, waiting years before amending their Amended Answer and Counterclaims.

1.2 Even assuming this Court allows Defendants to assert new amended counterclaims at this stage of the litigation and without filing a motion to amend, several of Defendants’ counterclaims (including their counterclaim for abuse of process; Wester’s claims for breach of contract and fraudulent inducement; and Carr’s claims for open account, account stated, quantum meruit, and infliction of emotional distress) are deficient as a matter of law and thus also are barred by the doctrine of futility.

1.3 Finally, Defendants’ counterclaims are meant solely to harass Plaintiffs, including Ben Turnage, and, therefore, should be struck under Federal Rule of Civil Procedure 12(f).

1.4 Plaintiffs incorporate by reference the arguments and authority set forth in Plaintiffs’ Memorandum in Support of Motion to Strike and/or Disallow

Defendants' Amended Answer and Counterclaims or, Alternatively, to Dismiss Counterclaims under Rule 12(b)(6).

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court grants Plaintiff's Motion to Strike and/or Disallow Defendant's Amended Answer and Counterclaims or, Alternatively, Motion to Dismiss Defendants' Counterclaims under Rule 12(b)(6).

Respectfully submitted, this the 29th day of October, 2018.

/s/ Michael A. Heilman

Michael A. Heilman

*COUNSEL FOR PLAINTIFFS AND
COUNTER-DEFENDANTS*

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification to all counsel of record.

This the 29th day of October, 2018.

/s/ Michael A. Heilman

Michael A. Heilman